

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:20-CV-297-FDW-DCK**

<b>DAVID GORDON OPPENHEIMER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>A.C. SCHULTES OF CAROLINA, INC. and</b>	)	
<b>DOES 1-10,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**THIS MATTER IS BEFORE THE COURT** on “Defendants’ Motion To Stay Answer Deadline Pending Motion To Dismiss Or Transfer” (Document No. 10) filed August 24, 2020. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and applicable authority, the undersigned will deny the motion.

By the instant motion, Defendants seek to stay the deadline to file an Answer until after resolution of “Defendants’ Motion To Dismiss Or Transfer For Improper Venue Under Rule 12(b)(3) and 28 U.S.C. § 1406(a)” (Document No. 6) filed on August 3, 2020. (Document No. 10). Defendants’ Answer was also due on August 3, 2020.

As noted by Defendants, the Honorable Frank D. Whitney’s “Initial Schedule Order,” issued in this case on May 27, 2020, states that a preliminary motion made pursuant to Rule 12(b)(3) “will NOT presumptively toll the time required to plead an answer....” See (“Initial Scheduling Order” p. 6). Nevertheless, Defendants contend that “resolution of the Motion to Dismiss is likely to result in either dismissal or transfer to another Court,” so the deadline to

Answer should be stayed. (Document No. 10). In the alternative, Defendants request a one (1) week extension after a decision on the instant motion to file their Answer. Id.

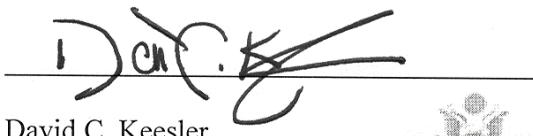
Plaintiff opposes the requested relief. (Document No. 11). Plaintiff notes that Defendants have not shown that their “after-the-fact extension is supported by good cause” and that Defendants failed to properly confer pursuant to Local Rule 7.1(b). Id.

In this instance, the Court will deny the request to stay the Answer deadline, but will allow the alternative request for a brief extension of time. Defendants are respectfully advised that additional failures to abide by the Federal Rules of Civil Procedure, the Local Rules of this Court, or the Scheduling Order(s) entered herein may lead to the denial of requested relief and/or sanctions.

**IT IS, THEREFORE, ORDERED** that “Defendants’ Motion To Stay Answer Deadline Pending Motion To Dismiss Or Transfer” (Document No. 10) is **DENIED**.

**IT IS FURTHER ORDERED** that Defendants shall file an Answer to Plaintiff’s Complaint on or before **September 30, 2020**.

Signed: September 22, 2020

  
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David C. Keesler  
United States Magistrate Judge 